THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No.18859 of 2006

Dated 05.01.2007

Between:

Syed Mahaboob Basha.

..... PETITIONER

AND

The Passport Officer, Secunderabad.

.....RESPONDENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No.18859 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the action of the respondent-Passport Officer in not issuing a fresh passport in the place of passport bearing No.E-5572683, which was damaged, as arbitrary and illegal.

The case of the petitioner is as under : -

He was issued passport bearing No.E-5572683 on 29.05.2003. Since the said passport was soaked in water and was damaged, he made an application on 21.12.2005 requesting the respondent to issue a fresh passport. Pursuant thereto the matter was referred to Police enquiry by the respondent and since the petitioner was not residing in the old address furnished, it appears that the Police had initially submitted adverse report. Subsequently the petitioner made an application to the Superintendent of Police informing change of address and requesting to issue a fresh verification report. Accordingly after conducting due enquiry, a fresh verification report dated 13.02.2006 was furnished by the Police. In spite of the same, the respondent failed to issue fresh passport. Hence the present writ petition.

The respondent filed a counter-affidavit stating that

in response to the routine Police verification ordered by the Office of the respondent, the Superintendent of Police, Kadapa, submitted a report stating that the petitioner is working as a Conductor in A.P.S.R.T.C. at Badwel Depot and he was not residing in the address submitted in the passport application. On the basis of the said report, a show-cause notice dated 02.07.2004 was issued to the petitioner calling upon him to submit his explanation as to why his passport should not be impounded. Since no explanation was received, by order dated 29.05.2003 the petitioner's passport was impounded under
Section 10(3)(b) of the Passport Act, 1967. Pursuant to the said order, instead of surrendering his passport, the petitioner had applied for duplicate passport on the ground that his passport was damaged. Thus, it is contended that the present writ petition, which was filed suppressing the real facts, is misconceived and cannot be entertained.

However, since the petitioner disputed the version of the respondent that his passport was already impounded and since the
counter-affidavit of the respondent was vague and the material particulars were not furnished, as ordered by this Court, the respondent filed an additional counter-affidavit dated 08.12.2006. In the additional counter-affidavit, it is stated that the show-cause notice dated 02.07.2004 sent by registered post on 14.07.2004 was returned unserved

as the petitioner was not residing at the address furnished. Thereupon by order dated 05.08.2004 the petitioner's passport was impounded and the said order was circulated vide circular dated 13.08.2004 to all the check posts, missions and embassies etc.,.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner vehemently contended that the order of impounding said to have been passed by the respondent is arbitrary and illegal since no opportunity of hearing was given to the petitioner at any point of time.

On the other hand, the learned counsel for the respondent submitted that since the petitioner is not residing in the address furnished in the passport, the notice could not be served on him and therefore, the action of the respondent cannot be held to be either arbitrary and illegal.

From the material placed before this Court it is clear that at the time of grant of passport in the year 2003, the petitioner had furnished his address as house No.8/54, Akkayapalli Village, Kadapa District. Admittedly he has subsequently shifted to house No.4/303, Nabikot, Kadapa town. The plea of the respondent that change of address was not intimated by the petitioner is also not in dispute. However, while relying upon the verification report dated 13.02.2006 issued by the Superintendent of Police,

Kadapa, in which it was certified that the petitioner has been staying at door No.4/303, Nabikot, Kadapa town and District, A.P. and previously he was residing at door No.8/54, Akkayapalli Village, Kadapa District, the learned counsel for the petitioner contended that the *bona fides* of the petitioner cannot be doubted and therefore the order of impounding is unwarranted.

Having regard to the facts and circumstances and since admittedly the order of impounding dated 05.04.2004 was passed without taking into consideration the version of the petitioner with regard to alleged suppression of information, I deem it appropriate to direct the respondent to pass fresh order after hearing the petitioner. Since a copy of the show-cause notice dated 11.05.2006 is enclosed to the counter-affidavit, the petitioner is granted liberty to submit his explanation within a period of four weeks from the date of receipt of a copy of this order. On receipt of such explanation, the respondent shall consider the same and pass appropriate orders in accordance with law afresh.

Accordingly the order of impounding dated 05.04.2004 is set aside and the writ petition is disposed of with the above directions. No costs.

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(G. ROHINI, J)

5th January, 2007
ghn